

ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email SARguidance@ico.org.uk.

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data [see our privacy notice](#).

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. [You can read their Privacy Policy.](#)

Q1 Does the draft guidance cover the relevant issues about the right of access?

- ☐ Yes
- ☒ No
- ☐ Unsure/don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

The issue needs to be addressed that if someone makes a SAR it normally means the end of the relationship between the two parties.

Organisations need to try and avoid getting to the point where individuals make a SAR by handling complaints and requests for documents effectively in the normal course of business. Not all requests for documents to an organisation should be treated as a SAR.

It should be noted that SARs are a blunt instrument and that in many cases the requestor may not want a copy of all the personal information an organisation holds about them. The requestor may only be interested in a specific document and therefore the organisation should always check what personal information the requestor wants. The requestor may have previously asked for the document and the organisation has not provided the document.

A SAR may also be made in combination with other data subjects rights, for example the right to object and this linkage needs to be addressed in the document.

In the case of requests for information about children mention should be made of the need to verify that the person making the request does have parental responsibility over the child to avoid disclosing information to the wrong person in the case of looked after children.

The guidance also needs to stress the importance of making sure that there is not a personal data security breach by disclosing personal information to the wrong person when responding to a data security breach. This can be avoided by carrying out identity checks.

Q2 Does the draft guidance contain the right level of detail?

- ☐ Yes
- ☒ No
- ☐ Unsure/don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

In the section on "Who is responsible" on page 5 of the draft guidance reference should be made to the other requirements under the GDPR/Data Protection Act 2018 relating to the need for a joint controller/ controller to processor agreement.

The issue of responding to SARs needs to be addressed in such agreements rather than when the first SAR comes in to the other joint controller/processor.

In the section on "What about archived and back -up information records" on page 25 mention should be made that if this information is the same as on the live system there is no need to provide a copy of the duplicated personal information but only a note that a copy is on the archived/back- up system. Archived information may have been anonymised in which case it falls outside the definition of personal data and therefore does not need to be disclosed in response to a SAR. Archived personal data which is pseudonymised will need to be disclosed in response to a SAR as pseudonymous data falls within the definition of personal data.

Q3 Does the draft guidance contain enough examples?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, please provide any examples that you think should be included in the draft guidance.

Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

Q5 On a scale of 1-5 how useful is the draft guidance?

- 1 – Not at all useful☐
- 2 – Slightly useful☐
- 3 – Moderately useful☐
- 4 – Very useful☐
- 5 – Extremely useful☐

Q6 Why have you given this score?

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?

- Strongly disagree☐
- Disagree☐
- Neither agree nor disagree☐
- Agree☒
- Strongly agree☐

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

Q9 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☒ An individual acting in a professional capacity
- ☐ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

Liverpool School of Tropical Medicine

What sector are you from:

Further education

Q10 How did you find out about this survey?

- ☒ ICO Twitter account
- ☐ ICO Facebook account
- ☐ ICO LinkedIn account
- ☐ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☐ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☐ Other

Thank you for taking the time to complete the survey.

